

City of Everett

Agreement for the Transfer of Funds from the City of Everett Library to the Greater Everett Community Foundation

THIS AGREEMENT is made and entered into as of this 4th day of March, 2015, by and between the CITY OF EVERETT (the "CITY") and GREATER EVERETT COMMUNITY FOUNDATION ("GECF") for the establishment of terms and conditions upon the transfer of funds from the City of Everett Library (the "Library") to the GECF.

Whereas, from time to time, the Library receives monetary donations, including endowed and non-endowed funds, which it desires to transfer to GECF; and

Whereas, the parties agree that having the same set of terms and conditions for the each fund transferred to GECF will provide consistency and reliability in the management of the funds;

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and GECF agree as follows:

1. **Purpose.** In the past the City has transferred several funds to GECF. The parties agree that having one set of terms and conditions under which all funds are transferred will provide consistency and reliability and avoid confusion caused by separate funds being transferred under different terms. Therefore this Agreement sets out the terms and conditions for any and all funds donated to the Library and transferred to GECF.
2. **Funds.** Funds are defined as all monetary donations to the Library, including endowed or non-endowed donations that the City transfers to GECF. Each donation is a separate Fund unless the donation is added to an already existing fund in accordance with Section 6 of this Agreement. Funds do not include donations of any kind made directly to GECF, whether for the benefit of the Library or not.
3. **Scope.** All Funds are subject to this Agreement.
4. **Payments and Expenditures.** Subject to the provisions of Section 11 of this Agreement, payments and expenditures from the Fund will be made based upon recommendations from the City's Library Board of Directors in accordance with the restrictions defined for that Fund's payments, if any, and in accordance with GECF's spending policy.

5. **Investment.** The governing board of GECF shall have final authority and discretion as to the investment and reinvestment of the assets of each Fund as part of GECF's investment portfolio.
6. **Additional Donations.** Donations may be added to an already existing Fund at any time by the City or by other donors.
7. **Accounting.** GECF will establish separate accounting controls for each Fund and for other funds received from other persons or organizations wishing to donate directly to GECF for the purpose of benefiting the Library. GECF will provide all routine accounting, as well as reporting to the Secretary of State and Internal Revenue Service regarding each Fund.
8. **Dissolution Provision.** Each Fund shall be continued as long as the need for the Fund exists and assets are held in the Fund for its purposes.
 - a. If a Fund is terminated or if, for any reason, GECF dissolves, ceases to exist or ceases to hold or administer a Fund or otherwise to function under this Agreement, then the net assets of such Fund(s) will be distributed to an organization(s) that GECF selects based upon one or more recommendations of the Library Board of Directors, with primary consideration to the Library.
 - b. If the Library dissolves or ceases to exist, GECF shall continue to hold the assets constituting each Fund and shall distribute the net income, or principal, or both to such organization(s) as, in the opinion of GECF, most nearly meets the purposes of the Library.
9. **Component Fund.** Each Fund shall be the property of GECF held by it in its corporate capacity and shall not be deemed a trust fund held by it in a trustee capacity. It is intended that each Fund shall be a component fund of GECF and that nothing in this Agreement shall affect the status of GECF as an organization described in Sections 501(c)(3) of the Internal Revenue Code. This Agreement shall be interpreted in a manner consistent with the foregoing intention so as to conform to any applicable requirements of the Internal Revenue Code and IRS Regulation.
10. **Fee.** Funds transferred to GECF are subject to administrative and investment fees. Each fund will be assessed a fee as established in the Foundation fee policy. GECF may change its fee structure at any time. Regardless of the foregoing, in no event will the total amount of both the administrative and investment fees assessed in any given year exceed 2% of a Fund's assets held.
11. **Variance Power.** Any and all assets held in any and all Funds shall be subject to the Articles of Incorporation and Bylaws of GECF, including the power contained therein for the governing board of GECF to modify any restrictions or conditions of a Fund on the distribution of funds for any specified charitable purpose or to a

specified organization if, in GECF's sole judgment, such restrictions or conditions become unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the area served by GECF.

12. Indemnification. Except as otherwise provided in this Section 12, GECF agrees to defend and indemnify the City from any and all Claims arising out of, in connection with, or incident to any negligent or intentional acts, errors, omissions, or conduct by GECF (or its employees, agents, representatives or subcontractors/subconsultants) relating to this Agreement, whether such Claims sound in contract, tort, or any other legal theory. GECF is obligated to defend and indemnify the City pursuant to this Section 12 whether a Claim is asserted directly against the City, or whether it is asserted indirectly against the City, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City. GECF's duty to defend and indemnify pursuant to this Section 12 is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of GECF. GECF's obligations under this Section 12 shall not apply to Claims caused by the sole negligence of the City. If (1) RCW 4.24.115 applies to a particular Claim, and (2) such Claim is caused by or results from the concurrent negligence of (a) GECF, its employees, subcontractors/subconsultants or agents and (b) the City, then GECF's obligations under this Section 12 shall apply only to the extent allowed by RCW 4.24.115. Solely and expressly for the purpose of its duties to indemnify and defend the City, GECF specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. GECF recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this Section 12: (1) "City" includes the City, the City's officers, employees, agents, and representatives and (2) "Claims" include, but is not limited to, any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damages, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages. If, and to the extent, GECF employs or engages subconsultants or subcontractors, then GECF shall ensure that each such subconsultant and subcontractor (and subsequent tiers of subconsultants and subcontractors) shall expressly agree to defend and indemnify the City to the extent and on the same terms and conditions as GECF pursuant to this Section 12.

13. Insurance. GECF shall comply with the following conditions and procure and keep in force during the term of this Agreement, at GECF's own cost and expense, the following policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "A" or better and with a numerical rating of no less than 7, by A.M. Best Company and which are acceptable to the City:

- a. Commercial General Liability Insurance on an occurrence basis, in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the

annual aggregate, including but not limited to: premises/operations (including off site operations), blanket contractual liability and broad form property damage; and

- b. Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement or that their personal insurance will be provide coverage under this Agreement.

The above liability policies shall contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the Foundation to furnish the required insurance during the term of this Agreement.

Upon written request by the City, the insurer or his or her agent will furnish, prior to or during any work being performed under this Agreement, a copy of any policy cited above, certified to be a true and complete copy of the original.

Prior to GECF performing any work pursuant to this Agreement, GECF shall provide the City with a Certificate of Insurance acceptable to the City Attorney evidencing the above-required insurance and naming the City of Everett, its officers, employees, and agents as Additional Insureds on the Commercial General Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insureds. Receipt by the City of any certificate showing less coverage than required is not a waiver of GECF's obligations to fulfill the requirements.

In case of the breach of any provision of this section, the City may, at its option and with no obligation to do so, provide and maintain at the expense of GECF, such types of insurance in the name of GECF as the City may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to GECF under this Agreement or may demand GECF to promptly reimburse the City for such cost.

- 14. Independent Foundation.** It is further agreed by and between the parties that because this Agreement shall not constitute nor create an employer-employee relationship, and since GECF is an independent foundation, GECF, shall be responsible for all obligations relating to federal income tax, self-employment: FICA taxes and contributions, and all other so-called employer taxes and contributions, including, but not limited to, industrial insurance (Worker's Compensation), and that GECF agrees to indemnify, defend, and hold the City of Everett harmless from any claims, valid or otherwise, made to the City because of these obligations.

Any and all employees of GECF, while engaged in the performance of any work or services required of GECF under this Agreement, shall be considered employees of GECF only and not of the City. GECF shall be solely liable for any and all claims that may or might arise under the Worker's Compensation Act on behalf of said employees, while so engaged and for any and all claims made by a third party as a consequence of any negligent act or omission on the part of GECF's employees, while so engaged in any of the work or services provided pursuant to this Agreement.

GECF shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the City free, clear, and harmless from all actions, claims, demands, and expenses arising out of said act, and rules and regulations that are or may be promulgated in connection therewith.

GECF assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state and City business and occupation taxes), fees, licenses, excises, or payments required by any city, federal, or state legislation which are now or may during the term of this Agreement be enacted as to all persons employed by GECF and as to all duties, activities, and requirements by GECF in performance of the work under this Agreement and GECF shall assume exclusive liability therefor, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

15. **Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, GECF shall make available to the City, Washington State Auditor, or designee, for examination all of GECF's records with respect to all matters covered by this Agreement and, furthermore, GECF will permit the City to audit, examine, and make copies, excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.
16. **City of Everett Business License.** GECF agrees to obtain a City of Everett business license prior to performing any work pursuant to this Agreement.
17. **State of Washington Requirements.** GECF agrees to register, and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and 51.08.195 prior to performing any work pursuant to this Agreement.
18. **Waiver.** Any waiver by GECF or the City or the breach of any provision of this Agreement by the other party will not operate to be construed as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

19. **Complete Agreement.** This Agreement contains the complete and integrated understanding and agreement between the parties and supersedes any understanding, agreement or negotiation touching on the subject matter hereto, whether oral or written, not set forth herein.

20. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, and the remainder of the Agreement shall remain in full force and effect.

21. **Notices.** Notices to the City shall be sent to the following address:

City Clerk
Everett City Hall
2930 Wetmore Avenue
Everett, WA 98201

And a copy to:

Library Director
City of Everett
2702 Hoyt Ave
Everett, WA 98201

Notices to GECF shall be sent to the following address:

Executive Director
Greater Everett Community Foundation
P.O. Box 5549
Everett, WA 98206

Either party may change its notice address or email effective on written notice to the other party of the change.

22. **Term and Termination.** This Agreement shall commence as of the date of execution of this Agreement and be ongoing unless otherwise terminated. Either party may terminate this Agreement upon one hundred and eighty (180) days written notice to the other. In the event of termination, the provisions of Section 8 of this Agreement shall control the disposition of any and all Funds.

23. **Venue.** Any lawsuit arising out of this Agreement shall be in Snohomish County, Washington.

24. **Assignment – Transfer.** GECF shall not sublet or assign any of the work covered by this Agreement without express written consent of the City.

25. **Approval of Solicitation of Materials.** The parties acknowledge that GECF is required to report to numerous governing authorities on public fundraising activities conducted in its name and must ensure that all solicitations on its behalf or in its name comply with applicable laws. Accordingly, the City hereby agrees that any charitable solicitation, fundraising campaign, printed material, electronic communications, press release, or other public solicitation referencing GECF shall require GECF's review and approval prior to the final printing or distribution of any solicitation materials.


26. **Conflict.** Should the terms and conditions of this Agreement conflict with any general terms, rules, or regulations of GECF now or in the future, the terms and conditions of this Agreement shall control.

IN WITNESS WHEREOF, the City and GECF have executed this Agreement as of the date first above written.

CITY OF EVERETT

**GREATER EVERETT
COMMUNITY FOUNDATION**

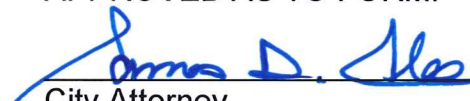
By: 
Ray Stephanson, Mayor

By: 
Name: Maddy Metzger-VH
Its: President + CEO

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

EVERETT PUBLIC LIBRARY BOARD:

By: 
President of the Board

Agreement

	Briefing
	Proposed Action
	Consent
XX	Action
	First Reading
	Second Reading
	Third Reading
	Public Hearing

Originating Department	Library
Contact Person	Eileen Simmons
Phone Number	257-8022
FOR AGENDA OF	May 27, 2015

db

Department(s) Approval

Legal, Library

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

On November 26, 2003, the City entered into an agreement with the Greater Everett Community Foundation (GECF) to establish the Everett Public Library Fund. This agreement will allow the Library to create additional accounts at the GECF for the transfer of future bequests and gifts. All additional funds transferred to GECF will be managed for the benefit of the Library.

Authorize the Mayor to sign the Agreement for the Transfer of Funds from the City of Everett Library to the Greater Everett Community Foundation.

Council approved
5/27/15 Jm